

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000001-001 DT

03/12/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

JUSTIN DERENDAL

NEAL W BASSETT

v.

DEBORAH A GRIFFITH (001)
PHOENIX CITY PROSECUTOR'S OFFICE
(001)

DEBORAH A GRIFFITH
300 W WASHINGTON STREET
PHOENIX AZ 85003-2103
BILL C SOLOMON

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

This case is a Special Action filed by Petitioner, Justin Derendal, after the trial judge, the Honorable Deborah A. Griffith (Respondent herein), denied his request for a jury trial for the crime of Drag Racing, a class 2 misdemeanor offense in violation of A.R.S. Section 28-708(A). After considering the Petition and the Response from the Real Party in Interest, the State of Arizona, and the oral arguments presented on February 5, 2003, this Court accepted jurisdiction in this case. This Court found that the issue presented in this Petition for Special Action is a matter of state-wide concern and of particular importance to Petitioners situated as Derendal, as well as the limited jurisdiction courts throughout Maricopa County.

This Court concludes that the trial judge did not err in denying Petitioner's request for a jury trial. This Court further concludes that criminal defendants do not have a right to a jury trial when charged with Drag Racing.

This appears to be a case of first impression involving Drag Racing, in violation of A.R.S. Section 28-708(A). This Court was unable to discover any reported cases in Arizona dealing with the issue of the right to jury trial to persons charged with Drag Racing.

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The Federal law is not helpful in regard to this issue. The United States Constitution requires that if a crime is punishable by more than six (6) months of incarceration, it is not a petty offense and the accused must be afforded the right to a jury trial.¹

Arizona has in fact, extended the right of a jury trial much further than that guaranteed by the United State Constitution.² The Arizona Supreme Court in McDougall³, listed four factors to evaluate in determining the right to a jury trial in the State of Arizona. The first three factors are found in Rothweiler v. Superior Court⁴:

1. The length of possible incarceration;
2. The moral quality of the act charges (sometimes referred to as the “moral turpitude” issue;
3. Its relationship to common law crimes.

The fourth consideration comes from State ex rel. Dean v. Dolny⁵ and requires that the Court evaluate whether additional serious or grave consequences might flow from the conviction.

The length of possible incarceration in this case is four (4) months imprisonment; the maximum possible sentence for all class 2 misdemeanors. The maximum possible fine is \$750.00. These factors are not controlling as Defendants charged for class 1 misdemeanors (maximum of six (6) months imprisonment) such as assault or disorderly conduct are not entitled to trials by jury.⁶

Petitioner cites Urs v. Maricopa County Attorney's Office⁷ for the proposition that a Defendant is entitled to a jury trial for the crime of Reckless Driving, and that crime's elements are not distinguishable from Aggressive Driving. The Court of Appeals conclusion in Urs v. Maricopa County Attorney's Office was based upon that court's construction of the ruling in District of Columbia v. Colts⁸ wherein the United States Supreme Court found that Colts was entitled to a jury trial because the crime of Drag Racing was traceable to the common law crime of Public Nuisance.⁹ The Court of Appeals in Urs concluded:

¹ Lewis v. United States, 518 U.S. 322, 116 S.Ct. 2163, 135, L.Ed.2d 590 (1996); Blanton v. North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989).

² State v. ex rel. McDougall v. Strohson, 190 Ariz. 120, 945 P.2d 1251 (1997).

³ Id.

⁴ 100 Ariz. 137, 410 P.2d 479 (1996).

⁵ 161 Ariz. 297, 778 P.2d 1193 (1989).

⁶ Goldman v. Kautz, 111 Ariz. 431, 531 P.2d 1138 (1975); Bruce v. State, 126 Ariz. 271, 614 P.2d 813 (1980); O'Neill v. Mangum, 103 Ariz. 484, 445 P.2d 843 (1968).

⁷ 201, Ariz. 71, 31 P.3d 845 (App. 2001).

⁸ 282 U.S. 63, 51 S.Ct. 52, 75 L.Ed.177 (1930).

⁹ 201 Ariz. at 73, 31 P.3d at 847.

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We decide that driving a vehicle “in reckless disregard for the safety of persons or property,” in violation of A.R.S. Section 28-693(A)(“reckless driving”), is in the character of operating a motor vehicle so “as to endanger [any] property [or] individual” a jury-eligible offense at common law (citations omitted). Consequently, Urs is guaranteed a jury trial by Article II, Sections 23 and 24 of our Constitution.

In a footnote to the Urs opinion, the Arizona Court of Appeals explained that the moral character of the offense of Reckless Driving clearly qualified it as a common law crime for which Urs was entitled to a jury trial:

“Indictable Offenses” at common law were jury-eligible crimes (citation omitted). An automobile, potentially, a dangerous instrumentality as the appalling number of fatalities brought about everyday by its operation bear distressing witness. To drive such an instrumentality through the public streets so recklessly “as to endanger property and individuals” is an act of such obvious depravity that to characterize it as a petty offense would be to shock the general moral sense. Such an act properly cannot be described otherwise than as a grave offense- - a crime within the meaning of the Third Article of the Constitution- - and as such within the Constitutional guarantee of trial by jury.¹⁰

This Court is able to easily distinguish the Court of Appeals’ reasoning from the case before this Court. Though the crime of Reckless Driving is a class 2 misdemeanor in the same manner that Drag Racing is a class 2 misdemeanor, these two crimes share no common elements. A.R.S. Section 28-693(A) provides:

A person who drives a vehicle in reckless disregard for the safety of persons or property is guilty of Reckless Driving.

And, A.R.S. Section 28-708(A), which prohibits drag racing, provides:

¹⁰ Id., 201 Ariz. at 73, 31 P.3d at 847, footnote 3.

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A person shall not drive a vehicle or participate in any manner in a race, speed competition or contest, drag race or acceleration contest, test of physical endurance or exhibition of speed or acceleration or for the purpose of making a speed record on a street or highway.

Drag racing contains no elements of driving in a “reckless” manner so as “to endanger property and individuals” so as to make the crime of Drag Racing traceable to the common law crime of Public Nuisance.

An evaluation of the moral quality of the act required to establish the crime of Drag Racing clearly reflects that drag racing is not a crime involving dishonesty, fraud, or any other type of crime requiring a deficient moral character to commit the crime. Therefore, this Court concludes that the crime of Drag Racing is not of such a moral quality that a jury trial would be required.

Finally, this Court also concludes that there are no sufficiently grave collateral consequences that follow from the conviction of Drag Racing that would entitle the Petitioner to a jury trial.

This Court, therefore, concludes that the trial judge (the Respondent Judge Deborah A. Griffith) did not err in denying Petitioner, Justin Derendal’s request for a jury trial in this case.

IT IS ORDERD denying all relief as requested by Petitioner Justin Derendal in his Petition for Special Action.